

TRIBAL

Comment Letters



Fort Mojave Indian Tribe

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August 13, 2004

Glen Gould
US Bureau of Reclamation
PO Box 61470 - LC - 2011
Boulder City, Nevada 89006 - 1470

Dear Mr Gould.

The Fort Mojave Indian Tribe has received a copy of the Draft Environmental Impact Statement for the Lower Colorado River Multi-Species Conservation Program and congratulates the preparers for a generally excellent job on this monumental work. However, we would like to offer comments on the section on socioeconomics - Volume I, Section 3.16.

Section 3.16 bases the value of agriculture on the 1997 Census of Agriculture and the 2000 Census of Population and Housing. The numbers in these censuses are for whole counties and, with the possible exception of Imperial County and Yuma County, do not well represent the value of the land and it's production in the intensely farmed valleys along the Colorado River. The Fort Mojave Tribe has land and farms in Mohave County Arizona, San Bernardino County California and Clark County Nevada. We are very familiar with the value of agriculture in this area and find some of the presented numbers to be understated in the extreme while others are too high.

For example, Table 3.16-1 lists 212 farms for Mohave County with 997,171 acres. If just the Colorado River area were used, the number would be 7 farms and 13,000 acres. The Table lists the average value of Mohave County farmland at \$ 247 per acre yet nearly all of the farming is in Mohave Valley where land is valued in excess of \$ 5,000 per acre. The Table lists 1,455 farms in San Bernardino County but there are only three farms within a hundred miles of the Colorado River and two of these are on the Fort Mojave Indian Reservation.

There are also some questionable items in Table 3.16 - 4. Again considering only the Colorado River region, the farm employment loss figures are way too high and we do not understand why they differ from county to county. The Tables lists the value of agricultural products sold as \$1,242 per acre in Mohave County, \$ 15,624 in San Bernardino County and \$ 5,556 in Clark County, this is the same area with the same crops, the same operators and similar values.

[illegible]

Ft. M-1

|Ft. M-2

|Ft. M-3

|Ft. M-4

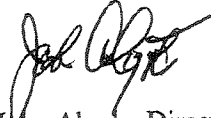
Glen Gould 8/13/04

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The Fort Mojave Indian Tribe appreciates the opportunity to make these comments. There are MSCP Opportunity Areas on the Reservation and the Tribe may wish to participate but the negotiations would go much smoother if both parties had a similar appreciation for the value of the land.

Ft. M-5

Sincerely



John Algois, Director
Department of Physical Resources

cc

Nora McDowell, Chairperson

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August 18, 2004

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Re: Comments of Quechan Indian Tribe on Draft Programmatic Environmental Impact Statement/Environmental Impact Report; Draft Habitat Conservation Plan; Biological Assessment; and Appendices for Lower Colorado River Multi-Species Conservation Program (June 18, 2004)

Dear Mr. Gould:

On behalf of the Quechan Indian Tribe ("Tribe"), we are filing these comments on the Draft Programmatic Environmental Impact Statement/Environmental Impact Report ("DEIS"); Draft Habitat Conservation Plan ("Draft HCP"), Biological Assessment ("BA"), and Appendices for the Lower Colorado River Multi-Species Conservation Program (June 18, 2004). The Tribe recognizes the significant effort that your office has devoted to preparing these documents.

I. The Quechan Tribe's Senior Water Rights

The Tribe's Fort Yuma Reservation is located in southwestern Arizona and southern California near Yuma, Arizona. The Tribe possesses present perfected rights from the mainstem of the Colorado River pursuant to the Decree and supplemental Decrees (1979 and 1984). The amounts, priority dates, and state where the rights are perfected are as follows:

Amount (AFY)	Acreage	Priority Date	State
51,616	7,743	Jan. 9, 1884	California

MSJM-1

This water is diverted at Imperial Dam through the Yuma Project Reservation Division - Indian Unit. These water rights are vested property rights that were reserved to meet the present and future needs of the Fort Yuma Reservation.

MSJM-1 con't

In addition, a Supreme Court decision issued on June 19, 2000, allows the Tribe to proceed with litigation to claim rights to an additional 9,000 acres of irrigable lands and about 78,000 AFY of water. Proving this claim would increase the water rights for the Fort Yuma Reservation.

II. General Concerns

The HCP, DEIS and BA streamline the environmental review process for 50 years for projects that involve Colorado River water rights, nearly all of which are junior to the Tribe's. At some point, the Tribe will seek economic and other opportunities that require consumptive use of its senior water rights. The federal trust responsibility requires that the HCP, DEIS and BA expressly state that nothing in the documents reviewed and resulting final decisions will interfere with the Tribe's present or future exercise of its senior water rights, or impose on the Tribe an undue burden of conserving threatened and endangered species or species proposed for listing.

MSJM-2

Additionally, the Tribe requests that the HCP, DEIS and BA assume that the Tribe will exercise its presently unexercised senior rights, as it does for Arizona, California and Nevada. *See, e.g.*, § 2.2.2 (Arizona's speculative future flow-related covered activities), § 2.3.2 (California's speculative future flow-related covered activities), § 2.4.2 (Nevada's speculative future flow-related covered activities). The HCP, DEIS and BA should include the Tribe's present and future exercise of its senior rights, through flow- and non-flow related activities, in their respective "covered activities" and "foreseeable" activities sections. Similarly, the HCP, DEIS and BA should analyze the effects of implementing the Tribe's present and future covered activities.

MSJM-3

MSJM-4

Additionally, the HCP, DEIS and BA should include or otherwise accommodate the Tribe's full use of its senior water rights, whether developed or not, in determining the environmental baseline. If not, the Tribe will bear an unfair burden under the Endangered Species Act when it decides to exercise its senior rights in the future. The HCP acknowledges that flows in Reach 6, which travels along the eastern boundary of the Fort Yuma Reservation, are presently "minimal" and contaminated, and that the native habitat has been seriously altered. Draft HCP at 3-8. Although the Tribe is not responsible for the degraded state of Reach 6, it should not have to bear the burden of this degraded baseline when it seeks to use its senior water rights in the future.

MSJM-5

III. Draft Environmental Impact Statement

<u>Goals and Objectives for the Conservation Plan (p. 2-2)</u> : We suggest that this section include the goal of not interfering with the Tribe's senior water rights, lands, or cultural resources.	MSJM-6
<u>Conservation Area Site Selection, Design, and Management (p. 2-70 to 2-75)</u> : The Tribe is concerned that the government's use of Colorado River water for the conservation and restoration projects will interfere with the Tribe's senior water rights.	MSJM-7
<u>Cultural resources (p. 3.5-5 to 3.5-16)</u> : The Tribe is concerned that Reclamation has only initiated a Class I report. First, we query why the report remains incomplete, since the draft was completed in 2000. A complete report is necessary so that the DEIS can fully evaluate impacts. Lithic scatters, lithic and ceramic scatters, rock rings, rock alignments, cleared circles and trails have been recorded in virtually all of the conservation areas. (p. 3.5-12) A proactive, comprehensive analysis of cultural resource impacts is critical since many cultural resources have already been destroyed. We also question Reclamation's decision not to prepare a more intensive Class II or Class III report now, if it presently knows where a particular project will occur.	MSJM-8
Finally, the DEIS contains no impact analysis or real mitigation measures, contrary to the requirements of NEPA and federal cultural resource protection laws. Instead, the DEIS merely defers the study of cultural resource impacts to a later unspecified date. "Mitigation" constitutes no more than nonbinding promises to comply with existing law. (p. 3.5-17 to -18) The DEIS vaguely states, "Projects located on tribal lands also might require additional analysis." (p. 3.7-2)	MSJM-9
<u>Environmental justice (p. 3.7-5 to -6)</u> : The Tribe is concerned about the loss of agricultural jobs, which could disproportionately affect its members and reservation residents. The DEIS should estimate the number of agricultural jobs projected to be lost on the Fort Yuma Reservation.	MSJM-10
<u>Hydrology and water quality (Ch. 3.9)</u> : The Tribe requests that the planned conservation projects, which will require a water supply of about 57,400 acre-feet of water per year (p. 3.9-16), and the substantial current and future actions sanctioned by the DEIS, HCP and BA, not interfere with the Tribe's senior water rights, or groundwater within the Fort Yuma Reservation boundaries. The Tribe is also concerned about pollution of the Lower Colorado through pesticide releases, and by increasing concentrations of perchlorate, selenium, Chromium 6 and other dissolved salts that result from water evaporation. (p. 3.9-17)	MSJM-11
<u>Indian trust assets (Ch. 3.10)</u> : The Tribe is concerned with impacts to its members' collection of natural plants; the long-term dedication of tribal land to habitat establishment projects; and interference with tribal water rights.	MSJM-12

Cumulative impacts (Ch. 4): We suggest including the Laguna Reservoir Storage Restoration Project in the cumulative impacts discussion.

MSJM-13

IV. Draft Habitat Conservation Plan

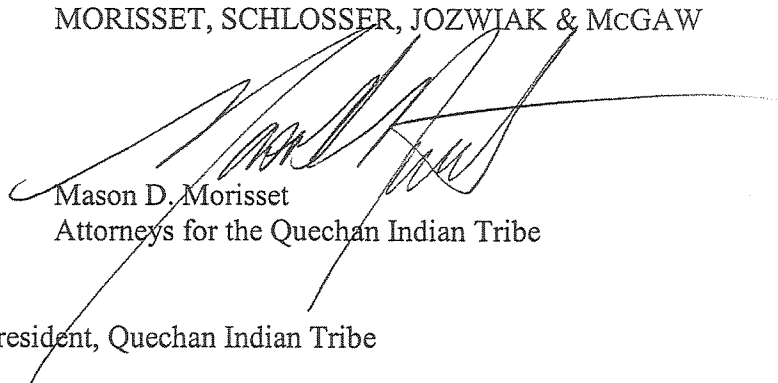
We are not aware that the Tribe has agreed to the use of its land for the proposed conservation projects, which appear to include the Yuma East Wetlands Pilot Project and Laguna Old Channel Restoration. Nor are we aware that the Tribe has agreed to the proposed annual lease rate of \$325/acre. We understand that the Bureau will require the Tribe's full agreement before proceeding with any projects on Fort Yuma Reservation lands. Additionally, we request that the DEIS and HCP show how much of these projects will occur within the boundaries of the Fort Yuma Reservation, and explain whether the project will affect river flow, ground water below the Reservation, tribal water rights and cultural resources. Finally, please inform us if any other conservation projects implicate Quechan lands.

MSJM-14

Thank you for this opportunity to comment.

Sincerely yours,

MORISSET, SCHLOSSER, JOZWIAK & MCGAW



Mason D. Morisset
Attorneys for the Quechan Indian Tribe

cc: Mike Jackson Sr., President, Quechan Indian Tribe

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